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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,230	12/31/2003	Duane G. Krzysik	KKC 4983 (K-C 19,380)	6635

321 7590 08/23/2006

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/750,230	KRZYSIK ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-65* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *34-65* is/are allowed.

6)☒ Claim(s) *1,2,10-18 and 26-33* is/are rejected.

7)☒ Claim(s) *3-9, 19-25* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-65 are pending. Applicant's arguments filed 6/6/06 have been entered.

Objections/Rejections Withdrawn

The following objections/rejections set forth in the Office action mailed 3/13/06 have been withdrawn:

None.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 10, 11, 17, 18, 26, 27, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeClercq et al (US 2002/0128170).

DeClercq et al teach a liquid rinse-added fabric care composition that is characterized by at least two visually distinct phases when the composition is at rest and wherein at least one of the phases contains a fabric care agent. The fabric care agents present in one or more phases of the composition may include fabric softener actives, color care agents, perfumes, antibacterial agents, etc. The composition optionally may contain an electrolyte, phase stabilizer, a phase separation inducing polymer and/or solvent. See Abstract. Visually distinct phases in the composition may have different colors, hues, intensities, etc. See para. 22. The temporary mixture formed after shaking should have a viscosity of less than about 10 Pa.sec, but preferably less than about 5 Pa.sec. See para. 31. Electrolytes may be present in the composition in amounts from 0.05% to 15% by weight and the addition of the electrolyte may lead to the formation of an aqueous bottom layer, while the top layer will consist of a clear/translucent formulation containing the fabric conditioning active. See para. 346. Suitable electrolyes include sodium chloride, sodium tripolyphosphate, etc. See paras. 346-348. Suitable phase modifiers are included in amounts up to 15% by weight of the composition and include selected surface active materials nonionic surfactants derived from saturated and/or unsaturated primary, secondary, and/or branched amine, amide, amine-oxide fatty alcohol, etc., each preferably having from about 6 to about 22 carbon atoms and less than or equal to 50 moles of ethylene oxide; alkoxylated cationic surfactants, etc. See paras. 352-374. Note that, the Examiner assert that about 15% of

a surfactant (phase modifier) would overlap with the amount of surfactant as recited by the instant claims.

Specifically, DeClercq et al teach that the compositions may contain one or more dyes for the purpose of rendering the separate phases visually distinct. In addition, it is envisioned that certain colors will be associated with certain fabric care benefits. See para. 335.

DeClercq et al do not teach, with sufficient specificity, a liquid color changing product comprising a first and second lamellar structured liquid, each containing a surfactant, electrolyte, coloring agent, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a liquid color changing product comprising a first and second lamellar structured liquid, each containing a surfactant, electrolyte, coloring agent, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because DeClercq et al suggest a liquid color changing product comprising a first and second lamellar structured liquid, each containing a surfactant, electrolyte, coloring agent, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claims 12 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeClercq et al (US 2002/0128170) as applied to claims 1, 2, 10; 11, 17, 18, 26, 27, and 33 above, and further in view of Hsu et al (US 2003/0139316).

DeClercq et al are relied upon as set forth above. However, DeClercq et al do not teach the specific dyes in addition to the other requisite components of the composition as recited by the instant claims.

Hsu teaches a liquid detergent composition comprising at least two layers, with a surfactant, a transition metal inorganic electrolyte, water, and optionally other ingredients distributed within the layers. In the inventive compositions, at least one of the layers is colored. Preferred compositions are transparent and are packaged within a transparent container. See Abstract. Suitable colorant agents include dyes such as Red 33, Violet 2, Green 8, etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a dye such as Red 33, Violet 2, Green 8, etc., in the cleaning composition taught by DeClercq et al, with a reasonable expectation of success, because Hsu et al teach the use of dyes such as Red 33, Violet 2, Green 8, etc., in a similar detergent composition and further DeClercq et al teach the use of dyes in general.

Claims 13-16 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeClercq et al (US 2002/0128170) as applied to claims 1, 2, 10, 11, 17, 18, 26, 27, and 33 above, and further in view of Zhu et al (US 2003/0203830) and Wei et al (US 2004/0248748).

DeClercq et al are relied upon as set forth above. However, DeClercq et al do not teach the use of pigments coloring agents such as mica or titanium dioxide in

addition to the other requisite components of the composition as recited by the instant claims.

Zhu et al teach an aqueous liquid laundry detergent composition containing a detergent surfactant, an emulsifier with an HLB value below about 8.5, and oil, and an electrolyte in an amount to provide ionic strength indicator of from about 0.55 to about 6.7. The composition separates, upon standing for at most 24 hours at ambient temperature, into at least two layers, one of which is an emulsion with a continuous aqueous phase while the second layer is preferably a transparent composition. See Abstract. Colorants can be used to color the transparent layer and include dye or pigment. See paras. 86 and 87.

Wei et al teach person cleansing compositions comprising a cleansing phase containing a surfactant and water, and a separate benefit phase comprising at least one water in oil emulsion, wherein the cleaning and benefit phases are packaged together and are in physical contact. See Abstract. Suitable colorants include pigments, pearlescent agents such as mica and titanium dioxide, lakes, colorings, etc. See para. 98.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a pigment or coloring agents including mica and titanium dioxide as the coloring agent in the compositions taught by DeClercq et al, with a reasonable expectation of success, because Zhu et al teach the use of pigments as a coloring agent in a similar detergent composition and Wei et al teach the use of pigments, lakes, mica and titanium dioxide as coloring agents in a similar detergent

composition and further, DeClercq et al teach the use of coloring agents in general which would encompass pigments, lakes, and other coloring agents.

Allowable Subject Matter

Claims 3-9 and 19-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the references of record, alone or in combination, teach or suggest a composition in which the first and second compositions have the specific viscosity or specific surfactants as recited by the instant claims.

Claims 34-65 are allowed.

None of the references of record, alone or in combination, teach or suggest a liquid color changing cleansing product comprising a first and second lamellar structured liquid containing surfactant, electrolyte, 2 different coloring agents, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Response to Arguments

With respect DeClercq et al, Applicant states that it appears that the Office has used impermissible hindsight analysis and reconstruction when modifying the DeClercq et al reference. Furthermore, Applicant states that the DeClercq et al reference discloses a myriad of optional ingredients available for use and there is no motivation or suggestion to use the surfactants, electrolytes, and dyes as required in the product of claim 1 over any of the other numerous optional ingredients described in the cited

reference. In response, note that, the teachings of a reference are not limited to the preferred embodiments and the Examiner maintains that the broad teachings of DeClercq et al suggest a multi-layered cleaning composition containing the same components in the same amounts as recited by the instant claims. With respect to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

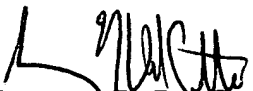
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
August 21, 2006